78-1277

Supreme Court, U. S.
FILED
FEB 16 1979
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

PETITION FOR A WRIT OF CERTORARI

WILLIAM IRVIN GOLDING SR.

Petitioner

v

THE CITY COUNCIL OF THE CITY OF
RICHMOND, VIRGINIA

and

THE MAYOR OF THE CITY OF RICHMOND
HENRY L. MARSH, III

Respondent

PETITION TO THE SUPREME COURT OF THE UNITED STATES TO ISSUE A WRIT OF CERT-ORARI ON AN ORDER OF THE SUPREME COURT OR VIRGINIA OF A WRIT OF MANDAMUS
Docket Number 781557; No Cite
Ordered on November 22, 1978; No Time of day Specified.

entitled: THE CITY COUNCIL OF THE CITY OF RICHMOND et al v. WILLIAM I. GOLDING SR. et al.

William Irvin Golding Sr.
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TABLE OF AUTHORITIES

Cases

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Richmond-Greyhound v. Davis, 200 Va. 147 (1958). . . . . .

Sinclair v. Young, 100 Va. 284, 40 S.E. 907 (1902). . . . . .

State v. Alexander, 77 N.W. 841, 107 Iowa 177. . . . . .

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State v. Riffle, 132 Ohio St. 546, 9 N.E. 2d 497 (1937). . . ..

Swcford Brothers Dry Goods Co. v. Owen, 133 P. 913, 37 Okl. 616, L.R.A. 1916 C., 189 . .

Statutes

United States Statue

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Virginia Code

Section 8.01 - 184 et. Seq. . . . . .
Section 8.01 - 644. . . . . .
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Section 18.2 - 154. . . . . .
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Section 24.1 - 46. . . . . .
Section 24.1 - 46(12). . . . . .
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Constitution of United States

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Constitution of Virginia

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Charter of the City of Richmond, Virginia

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Petitioner's Memorandum
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JURISDICTION

Comes now the Petitioner, pro se, to petition The Supreme Court of the United States for a Writ of Certiorari on an order of the Virginia Supreme Court of November 22, 1978; No specified time of day; Docket Number 781557 of a Writ of Mandamus in an action entitled: The City Council of the City of Richmond, Henry L. Marsh III in his official capacity and at the direction of the City Council of the City of Richmond, Petitioners v. William I. Golding Sr., and E.A. Duffy, Clerk of the City of Richmond, Respondant.

Your Petitioner asks that this Writ of Certiorari be issued on the finel order entitled The City Council of the City of Richmond, et al., against William I. Golding, Sr., et al which was ordered on Wednesday, November 22, 1978 Docket Number 781557.

Your Petitioner asks This Court to issue this Writ of Certiorari on the grounds that the Virginia Supreme Court's Order of Writ of Mandamus is in violation of your Petitioner's Constitutional rights and that the order of the Supreme Court of Virginia denied your Petitioner Due Process of Law. The Supreme Court of the United States is the proper court to ask for releif herein, according to 28USC Section 1257 (c) which is the statutory provision believed to confer this Courts jurisdiction.

QUESTIONS PRESENTED

This petition for a Writ of Certorari is asked for by your Petitioner to have This Court to review an order which the Supreme Court of Virginia issued as a final order, issuing a Writ of Mandamus agains your Petitioner in favor of the Respondents. This Writ of Mandamus applied for in the Supreme Court of Virginia, contrary to the public's best interest, against your Petioner as an indivial, in no official capacity, contrary to the use of mandamus. The Mayor was never was never authorized by Council to name and proceed against your Petitioner and should not have been made a party therof.

The Federal questions among which is as follows: First, did the Supreme Court of Virginia have jurisdiction to hear the issues presented by Respondents? Second, did the facts support the order issuing of the Writ of Mandamus by the Supreme Court of Virginia because other legal remedies, such as Quo Warranto or Declaratory Judgement were available? Third, did the Supreme Court of Virginia order the petition granted, therefore, subjecting your Petitioner to undue lidigation

contrary to your Petitioner's status, in violation of your Petitioner's rights protected under the Constitution of the United States. Fourth, due to the fact, no facts supported the elements of mandamus, did the Supreme Court of Virginia grant the the Respondents the relief sought in their petition for a Writ of Mandamus, contrary to Federal Law and sound uniform of harmony in decisions? Fifth, did the Supreme Court of Virginia deny your Petitioner Due Process of Law in going behind your Petitioner's Certificate of Election legally obtained? Sixth, did the Supreme Court of Virginia allow the misuse of the action, Writ of Mandamus, in allowing the Respondents to use this action to try title of office, contrary to the intent of mandamus? Seventh, did the Supreme Court of Virginia fail to bar the action of mandamus because the Respondents were barred by the Doctrine of Laches in applying for this Writ of Mandamus? Eighth, should the Supreme Court of Virginia have not ordered the Writ of Mandamus because Article II Section 1 of the Constitution of Virginia is unconstitutional according to Federal Law and the Constitution of the United States? Ninth, did the Supreme Court of Virginia exceed

its authority in extending the 30 day period in Section 3.04 of the Charter of the City of Richmond because the Council of the City of Richmond allediged no knowledge of a vacancy, which is not provided for in the said section? Tenth, did the results of the Supreme Court of Virginia's order, in its use by Council, of the said section 3.04 violate your Petitioner's protection which is guaranteed by Section 5 of the Voting Richts Act of 1965 as amended 42 USC, 1973c? Also did the said section allow Council to circumvent and usurp the intent of This Court in a certain suit entitled: City of Richmond v. United States et al., 45 Led 245 (1975)? (See Appendex to further substansuate these questions).

CONSTITUTIONAL PROVISION INVOLVED

Article I, Section II

The House of Representatives shall be comprised of members chosen every second year by the people of the several States, States, and the electors in each State shall have the qualifications requisite for electores of the most numerous branch of the State Legislature.(emphaize added)

Article II, Section I

1st Amendment Regligious and Political Freedom

Congress may not interfere with freedom of religion, speech, meeting, and petition. Congress shall make no law respecting an establishment of religion, or prohibiting the free excercise therof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

5th Amendment Right to Life, Liberty, and Property

....nor be deprived of life, liberty, or property, without due process of las.....

14th Amendment
Section 1 . . . Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. . . the right to vote at any election. . .is denied to any of the male inhabitants of such State, . . . or in any way abridged, except for participation in rebellion, or other crime. . . .(no mention of felony only).

A STATEMENT OF FACTS OF CASE

A city wideCouncilmantic election was held on May 2, 1978 to comform with a plan approved by the Supreme Court of the United States in a certain suit entitled; City of Richmond V. United States et al 45 Led 245 (1975) which provided that the Council of the City of Richmond shall appotion the City of Richmond into nine districts or wards to make in accordence with the provisions of section 15. 1-803 of The Code of Virginia; one member of council to be elected by the voters of each district or ward. At least three candidates ran in Richmond's Ninth Election District. The Petitioner, William I. Golding Sr. , was one of the ninth districts candidates. The City Registerar of the City of Richmond, Virginia, Mrs. Alice C. Lynch at the time of the filing as a candidate did qualify the Petitioner as a candidate. The State Board of election of the Commonwealth of Virginia did certify the Petitioner as a qualified candidate for the election to district nine of the City of Richmond.

On May 2, 1978 the Petitioner did receive the most votes from that district and was declared the winner by the election board of the City of Richmond and a certificate of election was issued. On July 1, 1978 the Petitioner was sworn in as councilman of the district by E.A. Duffy, Clerk of the Council of the City of Richmond and took the seat as a duly elected and qualified representative of the City's Ninth Election District. The Petitioner's status as a member of the City Council was not questioned until October, 1978. In that month rumors began to surface about the Petitioner's qualification to serve on council. On or before October 23, 1978, Alice C. Lynch (Mrs. Lynch) the General Registerar of the City received rumors that the petitioner had been convicted of (non common law) felonies in the mid 1950's. Without the knowledge of all the facts Mrs. Lynch then asked the Secretary of the Commonwealth to search his files to determine whether the petitioner's civil righrs had been restored.

The Secretary of the Commonwealth wrote Mrs. Lynch by letter dated October 23, 1978, advising her that he found no record pertaining to the petitioner. Mrs. Lynch immediately wrote the Petitioner advising him that she was striking his name from the City's Voters list. She acted without allowing the Petitioner to present evidence in his behalf and therefore denied him the right to vote without due process of law. A copy of the letter to the Petitioner was made available to the Mayor and other officials of the City of Richmond. On October 26, 1978 the Mayor directed the Clerk of the City Council, E.A. Duffy, to remove the Petitioner, name from the rolls. The Clerk refused to do so on the grounds that the certificate furnished to him by the State Board of Elections established that the Petitioner was the duly elected representative of the City's Ninth Election District. Therefore, the City Council without first determining weather a quorum was present, directed the Mayor to take all necessary legal

steps to compel the Clerk to remove the Petitioner,s name from the rolls and from the City payroll.
City Council and the Mayor then filed the petition for a writ of mandamus in the Supreme Court of Virginia without giving the Petitioner adequate notice or proceeding in the proper court or with the proper action.
The Supreme Court of Virginia held that at the time of the May 2, 1978 councilmanic election for the office of city councilman for the Ninth Election District of the City of Richmond, The Petitioner was ineligable for and disqualified from seeking or holding that office because of his prior conviction of certain (non common law) felonies. The request for a writ of mandamus was issued .
The Supreme Court of Virginia directed, not ordered, the Council of the City of Richmond to fill the Ninth Election District seat of the City of Richmond persuant to section 3.04 of the charter of the City of Richmond, This allowed the other eight districts to force their

will on district nine. further the use of section 3,04 of the Charter of the City of Richmond which the Supreme Court of Virginia directed, not ordered,The Richmond City Council's attention to violates section 5 of the Voting Rights Act of 1965 as amended 42USC 1973c.
On December 18, 1978 there was a black majority of members seated on council, black Councilman Henry W. Richardson nominated Carolyn C. Wake to the position of councilperson of the predominately white Ninth Election District. Black Mayor Henry L. Marsh III seconded the motion and the vote was unanimous and the black majority, with the white minority having little choice but to go along for harmoney, forced their will and choice of councilperson, on the predominately white district nine by appointing a person of the majority's choice over the predominately white district. To remove William I. Golding Sr., the choice of the voters of the predominately white district and replace him with Carolyn C. Wake, the choice of the black majority of council cir-

cumvents and violates the Voting Rights Act.
This was done inspite of and circumvented the orders of the Federal District Court, Richmond Division and section 5 of the Voting Righrs Act of 1965 as amended 42USC, 1973c and had not continued the approved plan, but usurped the power of the Supreme Court of the United States in a certain suit entitled; The City of Richmond V. United States et al 45 Led 245 (1975). The mere fact that an "election" was held is not enough to satisfy the above approved plan for an election in the City of Richmond, Virginia. To protect the right of the people of the Ninth Election District an Election that in fact elects someone must be held if the Petitioner,William I. Golding was not elected on May2,1978. Therefore the Petitioner contends the only way to satisfy the plan of the Supreme Court of the United States in a certain suit entitled: The City of Richmond V. United States et al 44 Led 245 (1975) is posiably to call for a special election to be held in the Ninth Election District as soon as posiable.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 22nd day of November, 1978.

The City Council of the City of Richmond, et al, Petitioners,

against Record No. 781557 Respondents,
William I. Golding, Sr.,et al.,

Upon a Petition for a Writ of Mandamus

This day came the parties, by counsel, upon the application for a writ of mandamus filed by petitioners, The City Council of Richmond and the Mayor of Richmond, Henry L. Marsh,III, in his official capacity and at the direction of the City Council of the City of Richmond; upon the special plea to the jurisdiction, motion to dismiss and grounds of defense of respondent William I. Golding,Sr., upon the motion to dismiss and grounds of defense

of respondent E. A. Duffy, Clerk of the City of Richmond; and upon the argument of counsel.

Upon consideration whereof, the court overrules the aforesaid special plea to the jurisdiction and denies the respective motions to dismiss.

Upon further consideration whereof, the court is of opinion that at the time of the May 2, 1978 councilmanic election for the office of city councilman for the Ninth Election District of the City of Richmond, the said respondent William I. Golding, Sr.,was ineligible for and disqualified from seeking or holding the office of city councilman because of his prior convictions of certain felonies. Accordingly, the court holds that the election of the respondent William I. Golding, Sr., as a member of the Council of the City of Richmond was a nullity and that a vacancy exists in the office of the councilman for the said Ninth Election District.

It is therefore ordered that the writ of mandamus do forthwith issue directed to the said respondents requiring and commanding: (1) that respondent Duffy delete respondent Golding's name from the rolls as a member of City Council and delete respondent Golding's name from the City payroll; and (2) that respondent Golding relinquish forthwith any claims to the office of member of City Council for the said Ninth Election District, relinquish all muniments of the office, and desist immediately from further exercise of the functions, powers, and responsibilities of that office.

The court further orders that, under section 3. 04 of the Charter of the City of Richmond, the said City Council shall have thirty days from the date of this order within which to fill the existing vacancy.

A COPY

Allen L. Lucy
Clerk

REASONS FOR GRANTING THE WRIT

There was no evidence to establish suficient facts to support the elements of mandamus. The Virginia Supreme Court failed to regonized that the petition for the Writ of Mandamus was labeled to your Petitioner, William I. Golding Sr. as an indivial in no official capacity, therefore lacked jurisdiction over your ~~Appellant~~ Petitioner. The proper remedies for the relief sought were Quo Warranto of Declartory Judgement. The Supreme Court of Virginia ha no right to go behind the Certificate of Election issued legally to your Petitioner. Relief sought by the Respondents were barred by the Doctrine of Laches. The Respondants were Estopped in the Mandamus action from denying that the Petitioner was a duly elected and qualified member of Council. Article II Section 1 of the Constitution of Virginia is unconstitutional because of the 1st and 14th Amendments and the enabling acts "An Act to Provide for more Efficient Government of Rebel States. Artile II, Section 1 of the Constitution of Virginia and Section 24. 1-46 of the Code of Virginia are unconstitional by virtue of the 1st & 14th Amendments which violaed the Due Process of Law. Section 3.04 of the Charter of the City of Richmond allowed Council to usurp and circumvent This Court"s order

in a certain suit entitled; The City of Richmond v. The United States et.al. 45 Led 245 (1975) and violated your Petitioners rights as protected under Section 5 of the Voting Richts Act of 1965 as amended.

The Virginia Supreme Court's order herin violates these well established principles of law. The City of Richmond which is the Capital of Virginia of over 220,000 citizens. Therefore, your petitioner prays that This Court issue this Writ of Certorari that would in effect declare the order of Writ of Mandamus issued against your Petitioner was null and void and without merit because of the facts presented by your Petitioner herein show clearly the error in judgement of the Virginia Supreme Court in issuing the order of Writ of Mandamus against your Petitioner. If this Court finds it cannot give your Petitioner the full releif herin than your Petitioner ask This Court to use its discretionary power to order a special election in the Ninth Election District of the City of Richmond to give the voters of the said right to infact to elect their own Councilperson.

CONCLUSION

For the foregoing reason, a Writ of Certiorari should be issued by This Court against the decision and judgement of the Supreme Court of Virginia in effect that would declare the Writ of Mandamus reffered herin shall be considered null and void, without merit. Your Petitioner must bring to This Court's attention the Notice for a Petition for a Writ of Certorari on Page XXVI herin, at that time your Petitioner also notified E.A. Duffy, Clerk of the Council of the City of Richmond, and Attornies, and Responents herin mentioned on Page IV herin, of his right to join, as he was not to be made a party hereto. Council has not authorized, to my knowledge, him to join, nor has he expressed a desire to join, nor has his attorney expressed a desire to join, rather the contrary. If and when the 90 day period expires to bring this action, he does not join, it is the contention of your Petitioner he may not join. Amoung the many issues which This Court must deal with herin, is whether or not The Supreme Court of Virginia had a right to issue a Writ of Mandamus against your Petitioner, William

Irvin Golding Sr., a private citizen in no official capicity, just because he claimed to have title to the office of Councilman of the Ninth Election District of the City without Declaratory Judgement first in Circuit Court. Your Petitioner further concludes if the Order issued by the Supreme Court of Virginia is in error in any way This Court also must conclude the entire order is defective and issue the applied for Writ of Certorari. Further it is the conclusion of your Petitioner that all items that were ordered relinquished by the Supreme Court's Virginia order, by your Petitioner to the City Attorney,Conard B. Mattox Jr., forthwith upon the entering of this Writ of Certerari or Stay of exicution of the said mandamus order be returned. If This Court finds that Section 3.04 of the Charter of Richmond violates your Petitioners rights, as well as the rights of the citizens of the Ninth Election District, your Petitioner prays that This Court use its discretionary power to order a special election in the said district and/or to change the said section to conform with This Court's Plan for election in the City of Richmond, Virginia. Your Petitioner prays This Court order that the Respondents pay

all your Petitioner's cost in these proceedings and in the action taken against him, as an indivial, in the petition for a Writ of Mandamus which was granted by the Virginia Supreme Court.

Respectifully
Submitted

William Irvin Golding Sr.

NOTICE FOR A PETITION FOR A WRIT OF CERTORARI

PLEASE TAKE NOTICE: that the Petitioner, William I. Golding Sr., pro se, is petitioning for a Writ of Certorari of an order entered on November 22, 1978, Docket Number 781557, of the Supreme Court of Virginia in the City of Richmond, Virginia in a Writ of Mandamus of which action was brought by the City Council of Richmond et al v. William I. Golding sr. et al to ask the UnitedStates Supreme Court of the United States issue a Writ of Certorari presuant to 28 USC Sec. 1257.

Also take notice that it is the belief of the Petitioner, that E A. Duffy , Clerk of the Council of the City of Richmond, who also was a Respondent as William I. Golding Sr. in the Mandamus order of the Supreme Court of Virginia and has no interest in this petition of Writ of Certorari and will not be made a party hereto.

William I. Golding Sr.

William I. Golding Sr.
2246 Bywood Lane
Richmond, Virginia 23224

IN THE SUPREME COURT OF VIRGINIA
IN THE CITY OF RICHMOND, VIRGINIA

WILLIAM I. GOLDING, SR. Petitioner

VS.

THE CITY COUNCIL OF THE
CITY OF RICHMOND, VIRGINIA
ET AL CONRAD B. MATTOX Respondent
JR. CITY ATTORNEY
9th and BROAD STREETS
RICHMOND, VIRGINIA 23219

STAY FOR A WRIT OF CERTORARI

Comes now the Petitioner pro se, who desires a stay of the order of this court for a pending of an appeal for a Writ of Certorari to be filed for February 20, 1979, in the Supreme Court of the United States. This stay is presented for the approval of the judges of this court whose order is sought to be reviewed by the Supreme Court of the United States, which action is required by law, pursuant to 28 USC Section 2101 (f). The Petitioner

asks for this stay as any further delay by this court will have potentially disastrous impact on pending and proposed legislation and would effectively deny the Ninth District of the City of Richmond, Virginia of a duly elected, by the people, representative on the Council of the City of Richmond. Further envorcement of this court order of November 22, 1978 in the matter of the City Council of the City of Richmond et al against William I. Golding, Sr., et al, Record No. 781557 would deny the petition equal protection under the law and would have an adverse effect on the public interest for years to come.

I ask for this stay pending this Writ of Certorari according to rule 27 of the rules of the Supreme Court of the United States.

William I. Golding Sr.

William I. Golding Sr.
2246 Bywood Lane
Richmond, Virginia 23224

AFFIDAVIT OF SERVICE OF WRIT OF CERTORARI AND STAY

I, William I. Golding Sr. hereby certify that I have transmitted by mail this notice persuant to rule 33 (3) (c) of the Rules of The Supreme Court of the United States to all the above Respondents in this Writ of Certorari and Stay and also the following persons at the given address.

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E. A. DUFFY
CLERK OF THE COUNCIL
OF THE CITY OF RICHMOND
9th and BROAD STREETS
RICHMOND, VIRGINIA 23219

William I. Golding Sr.

STATE OF VIRGINIA
CITY OF RICHMOND:

I the under signed, a notary public do certify that the above person appeared before me this 13th day of February 1979, acknowledged that the above is true and correctto the best of his knowledge and belief.

My commission expires March 12, 1982

Bessie Jordan Lynch
Notary Public

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 14th day of February, 1979.

The City Council of the
City of Richmond, et al., Petitioners,

against Record No 781557

William I. Golding Sr., et al., Respondents.

Upon consideration of the application of William I. Golding Sr., in proper person, prayin for a stay of execution of the judgment rendered herin on November 22, 1978, pending review on certiorari in the Supreme Court of the United States, the application is refused.

A Copy
Teste:
Allen L. Lucy
Clerk

CERTIFICATE OF SERVICE

I, William I. Golding sr., hereby certify that I have transmitted these copies of this PETITION FOR A WRIT OF CERTORARI to This Court and three copies have been delivered to the following attornies:

R. Harvey Chapell Jr.
Lee F Davis Jr.
Paul W. Jacobs II
Christin, Barton, Epps, Brent and Chappell
1200 Mutual Building
Richmond, Virginia 222111

T. S. Ellis III
John Charles Thomas
Rolliff H. Purrington Jr.
P.O. Box 1535
Hunton and Williams
Richmond, Virginia 23212

Signed

William I. Golding Sr.

APPENDEX

WILLIAM IRVIN GOLDING SR.

Petitioner

v.

THE CITY COUNCIL OF THE CITY OF RICHMOND, VIRGINIA

and

THE MAYOR OF THE CITY OF RICHMOND HENRY L. MARSH, III

Respondent

I. THE SUPREME COURTOF VIRGINIA DID NOT HAVE JURISDICTION TO DETERMINE THE ISSUES PRESENTED TO IT BY THE RESPONDENTS AS THERE WAS LACK IN DUE PROCESS OF LAW.

Did the Supreme Court of Virginia have jurisdiction lawfully to determine the issues in the mandamus action. The Petitioner submits that the Supreme Court of Virginia did not?

Article IV, section 1, of the Constitution of Virginia, establishes that the Supreme Court of Virginia, has original jurisdiction of Mandamus Cases. Section 7-96 of the Code of Virginia conferred the power to the Supreme Court of Virginia which the Constitution of Virginia established.

The legislature of Virginia determined that certain requirements had to be met in order to invoke the original jurisdiction of the Supreme Court of Virginia in Mandamus Cases. Virginia Code Section 8.10-644 must be complied with before an application for Mandamus can be made to the Supreme Court of Virginia. This code section is jurisdictional. The Respondent made applica-

tion to the Supreme Court of Virginia for a Writ of Mandamus within one hour of this Petitioner being served with the papers, at 9:00 o'clock a.m. on October 31, 1978. The Statute requires reasonable notice of making application. The notice given this Petitioner was so un resonable that it can be said that application was make without notice.

The Petitioner was served at approxmately 8:00 o'clock a.m. on October 31, 1978, at his home located at 2246 Bywood Lane, Richmcnd, Virginia which is approximately 15 to 20 minutes from the Supreme Court of Virginia by automobile, not including parking the automobile in the congested area surrounding The Supreme Court of Virginia. This Petitioner did not have time to read and understand the papers served on him, and get to the Supreme Court of Virginia by 9:00 o'clock a.m.. This Petitioner did not have time to appear and object to the filing, or if appropriate, to do the "non-descretionary ministerial act" which was sought to be compelled by the Respondents.

The approch used by the Respondents was so repugnant to fundimental fairness and fair play that it violated Due

Process of Law as Provided by the Fourteenth Amendment to the Constitution of the United States and Article I, Section 11 of the Constitution of Virginia.

The Supreme Court of Virginia refleected on the right to reasonable notice in case of Fugate v. Weston, 156 Va. 107, 157 S.E., 736, (1931), stating:

Unless a Constitution provides otherwise, the right to notice is universally recognized when a question essentially judicial is involved. It is as old as the common law and is reaffirmed in the Magna Charta c. 29. In Ramshay's Case, 18 O.B. 190, it is characterized as one of "the principles of eternal justice." It is a part of the law of the land, or of due process of law. Va. Const. Section 8.11; Foster v. Dansas, 112 U.S. 201, 5S. Ct. 8, 97, 28 L.Ed. 629, 696: Shurtleff v. United States, 48 C.J. 898, 22 R.C.L. 547.

It is quite evident that the Respondents had little regard for the manditory and jurisdictional requirements of Virginia Code Section 8.01-644, which provides clearly:

Application for a Writ of Mandamus or a Writ of Prohibition shall be on petition verfied by oath, <u>after</u> the part against whom the writ is prayed has been served with a copy of the petition and notice of the <u>intended application a reasonable</u> time before such application is made. (emphasis added)

For this reason alone this Writ of Mandamus should have been dismissed, however

there are other reasons The Supreme Court of Virginia did not have Jurisdiction which are as follows:

The "jurisdictional elements" of mandamus were missing in the action that was pending before the Supreme Court of Virginia. It is important to state at the onset that the "Mandamus Label" used by the Respondents was misleading. It was used for the purpose of bringing an issue to the Supreme Court of Virginia, without which the Supreme Court of Virginia had no jurisdiction. The proper jurisdiction lied in a circuit court to determine the issues presented by the Respondents.

The Petition was called a "Petition for a Writ of Mandamus", however, the relief sought and prayed for therin was for a declaratory judgement to determine; Whether or not a vacancy exists in the Ninth Election District Seat of the Council of the City of Richmond. Mandamus", was not the remedy to resolve this question. The relief sought by the Respondents can not be obtained by Mandamus. The Respondents admitted that, "All issues raised in the Petition grow out of the essestial question of Golding's status".

In essence, prayed the Supreme Court of Virginia to decide whether Petitioner, William I. Golding, Sr, has any right to claim he was the councilman from the Ninth Election District of the City of Richmond.....". and, "it is a straightforward problem of the status of an individual...". Better stated, the Respondents sought a declaratory judgement regarding the status of an individual. It was crucial to determine your Petitioner's status first. The Supreme Court of Virginia was without jurisdiction.

Article IV, Section 1 of the Constitution of Virginia provides:

***

The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of habesas corpus, mandamus, and prohibition and in matters of judicial censure, retirement, and removal under Section 10 of this Article. All other jurisdiction of the Supreme Court shall be appellate.

The Supreme Court of Virginia had no jurisdiction to determine the status of the Ninth District Seat. The Respondent's remedy was in a circuit court with a declaratory judgement action. The Supreme

Court of Virginia should not have declare a vacancy. The statutory remedy is adequate in law. If the Respondants, labeled the papers, "Petition for a Declaratory Judgement", this would have removed the confusion. The Supreme Court of Virginia would have had no trouble recognizing that it was without jurisdiction. See: D.D. Jones Transf. and Whse. Co. v Commonwealth ex rel. State Corp. Common, 174 Va. 184, 5 S.E. 2d 628; Portsmouth Restaurant Ass'n v. Hotel and Restaurant Employees Alliance, Local 807, 183 Va. 757, 33 S.E. 2d. 218 (1945).

The Respondents sought to compel Duffy, the Clerk of the Council of the City of Richmond, to perform a discretionary act and moreover an act that constitutes unlawful conduct by Duffy. Duffy had no right to unlawfully remove the name of a person duly elected, qualified and certified by the Board of Electors of the City of Richmond.

The Virginia Legislature provided for declaratory judgement by stature, Section 8.01-184 et seq with jurisdiction in the circuit courts.

The circuit courts also has jurisdiction by statute in contest of elections Section 24.1-239 and 24.1-240 et seq and Quo Warranto.

The status as to whether or not a vacancy exists was to be determined herein, nothing more. There was nothing unique in the Golding case that would have required a mandamus approach to resolve the issues.

The several elements of mandamus must be existing by facts, and prayed for, by the Responents before mandamus will lie. The elements of adequate remedy at law must be absent, and a clear duty to perform a non-discretionary ministerial act must exist, because, without them, the action was not mandamus.

The Respondents relied on Sinclair v. Yourn, 100 Va. 285, 40S.E. 907 (1902). The Sinclair case asserts that the Writ of Mandamus is now the well settled practice and affords a simple, expedious, adequate and complete remedy in such cases as the one that was before the Supreme Court of Virginia

This is not correct. Sinclare indicates that a combination of quo warranto and detinue were necessary to resolve the

issue nor would detinue resolve the issue. The position was promoted that mandamus would resolve both issues which existed. The Sinclare case and the Golding case should have been distinguishable. In the Golding case the only issue was the status of the council seat. In Sinclair, both delivery of property and title to office were issues

The mandamus case that was at the bar did not require a "combination of actions." In Sinclair, the petitioner sought indeifiable muniments which was a basis for the ditinue actiсn Sthe sucessor and presucessor were at litigation over the title to the office.

In the mandamus action, the Respondints were not claiming title to the council seat and have made no allegation of the fact that muniments exist. In the mandamus action there are no records, books or other instruments of the council seat. The items usually sought are treasurers records, books of account, registers or lists of voters, or any great seal, etc. Determination of the status of the council seat is the only issue to be resolved. The Respondents had an adequate remedy at law in the circuit court.

There was no duty existing at the time on Duffy to act, and no indentifiable muniments and no successor, challenger.

If there was a presuccessor challenger,

it must have been the candidate with the second highest number of votes in the election, rather then the Council of the City of Richmond and/or Henry L. Marsh III as Mayor.

Logically the next jurisdictional question arises as to whether or not there was any lawful party named in the Petition as a petitioner to pursue this matter. It seems fairly obvious that if no lawful party exists, the Supreme Court of Virginia would have been without jurisdiction and the petition should have failed.

Were Henry L. Marsh, Kemp, Kenny, Rennie, Richardson, Thompson and McDaniel acting as individuals on October 26, 1978 at 7:15 in a room disignated Council Chambers or were they acting in their Official capacities, collectively as members of the City Council collectively speaking for the legal entity of the City Council of the City of Richmond, when Mr. Kemp moved "the Council instructs you (Marsh) to institute legal proceedings in the appropriate Court to compel the Clerk (Duffy) to remove Mr. Golding's name from the rolls as a City Councilman, and to remove his name from the City payroll, each effective October 23, 1978."

Mr. Duffy in his official capacity as Clerk of the City of Richmond had not called the roll at the time of the motion to determine if the persons present were in fact duly elected and qualified members of the City Council of the City of Richmond and to determine whether a quorum was present to transact the lawful business of the city. The Petitioner submits that the persons present acted individually on Mr. Kemp's motion. The roll call of the persons present was made as individuals to concur with Mr. Kemp's suggestion.

If they were acting in their official capacity, would it have not have been necessary for a notice to be given to Mr. Golding of the particular item and motion. Was a suspension of the rules of the proceedure of the City Council required; or were the participants trying to be particularly careful to act as individuals outside of the regular proper lawful sucession of the City Council of the City of Richmond. The Petitioner believes and urges the later to be the case.

It was also be brought to the Supreme Court's of Virginia attention that if this

action was a part of the City Council of the City of Richmond, that the Mayor had exceeded the direction and instruction of the City Council by instituting legal proceedings against Mr. Golding. The "authority and power to act in the name or on behalf of the Council was limited to instituting a legal proceeding to compel the Clerk to act. The petition presented to the Supreme Court of Virginia far exceeded that. It was submitted to the Supreme Court of Virginia that if the Supreme Court of Virginia had the jurisdiction, the power and the authority to do equity for all parties, including the appointment of Mr. Golding. The Respondents did in their prayer ask the Supreme Court of Virginia for such other further and general relief as the nature of the case in the Court may require or as The Supreme Court of Virginia deemed appropriate.

The Petitioner, William I. Golding Sr., stated to the Supreme Court of Virginia that if the Supreme Court of Virginia did have jurisdiction to render general relief as the nature of the case may require or as the Supreme Court of

Virginia had deemed appropriate that if the Supreme Court of Virginia did find that it had jurisdiction, that it should have done equity for all parties including your Petitioner, William I. Golding This was to appoint your Petitioner as the Ninth District Member of the City Council of the City of Richmond.

Therefore the Petitioner moves that that the Petition herin be granted on the grounds and for the reasons set forth herein above. The Petitioner recognizes that argument of the "jurisdictional elements" of Mandamus which will be treated in argument # II hereinafter set forth.

II DID THE EVIDENCE ESTABLISH SUFFICENT FACTS TO SUPPORT THE ELEMENTS OF MANDAMUS OR DID IT LACK DUE PROCESS OF LAW

Petitioner Golding contends that the evidence did not establish sufficient facts to support the elements of mandamus. In the interest of brevity, the Petitioner will not repeat his contention in the prior argument concering that the

Respondent failed to prove the jurisdictional elements of mandamus, but incorporated by reference the essence of these arguments hersin on the merits of the case.

The essentials for the issuance of a writ of mandamus were stated in Richmond - Grayhound Lines v. Davis, 200 Va. 147 (1958) as follows.

"A writ of mandamus is an extraordinary remedial process, which is not awarded as a matter of right but in the exercise of a sound judicial discretion. Due to the drastic character of the writ, the law has placed safeguards around it. Consideration should be had for the urgency which prompt an exercise of the discretion, the interests of the public and third persons, the results which would follow upon a refusal of the writ, as well as the promotion of substantial justice. In doubtful cases the writ will be denied, but where the right involved and the duty sought to be enforced are clear and certain and where there is no other available specific and adequate remedy the writ will issue. It will not lie where it would serve no useful purpose or where it world work as injustice or hardship or be harmful to the public interest." (Emphasis added)

In the case of Richmond, Fredericksburg & Potomac Railroad Co., v Fugate 206 Va.

159 (1965), The Supreme Court of Virginia stated that it was not a proper function of a mandamus proceedings to consider and evaluate technical and conflicting evidence. The Supreme Court of Virginia continued on to say that the principle function of mandamus was to command and execute, not to inquire and adjudicate. In the Mandamus case, the evidence was conflicting and the issues were complex, and the nature of the case should have required the Supreme Court of Virginia to conduct inquires before adjudication could have been made. Since Respondents had adequate remedies available to them on the Circuit Court level, where the Court was better equipped to conduct any required investigations. The Supreme Court of Virginia as a matter of sound judicial discretion, should have refused Respondents the relief requested and left them to other available legal remedies, such as Quo Warranto or Declaratory Judgment, or such other relief as may be available.

Further, in determining whether or not to exercise any jurisdiction, it

should have been here, the Supreme Court of Virginia should have looked to the facts presented herein showing the hardship that a writ of Mandamus did work on the Petitioner, in light of the way he has rehabitilated himself since 1955, in view of the exemplary manner in which he had represented his District on the City Council, and, also to the injustice and harm that was done to the people of the Ninth District of the City of Richmond who elected the Petitioner and who continues to support him by their comments of support, public appearance in his behalf, and circulation of petitions requesting that he should have been retained as as their Councilman regardless of his past mistakes. Here the promotion of substantial justice would have seem best reached by the Supreme Court of Virginia denying the Petition. This position was clearly supported by the action of the Governor to the Commonwealth of Virginia in forthwith removing the Petitioners political disabilities on October 27, 1978, pursuant to Petitioner application on October 26, 1978.

III THE SUPREME COURT OF VIRGINIA SHOULD NOT HAVE GONE BEHIND THE CERTIFICATE OF ELECTION TO DETERMINE WHETHER OR NOT A VACANCY EXISTED IN THE NINTH ELECTION DISTRICT SEAT BECAUSE OF THE LACKING IN DUE PROCESS OF LAW.

The Respondents' argument which dealt with their alleged right to require the Petitioner to relinguish all claims to the office, which deals with the question of whether or not there was a vacancy in office, argued that the Petitioner's election to City Council was void ab initio. The case cited by the Respondents in support of the contention were not controlling in the mandamus action. The first case cited, Dean v. Pallicelli, 194 VA. 219 (1953) a taxpayer action filed by bill of equity in the Circuit Court of Arlington County, dealt with an elective public office but not with the effect of the existence of a valid Certificate of Election as was in the mandamus action. The second case cited, Norris v. Gilmer, 183 VA. 367 (1944), dealt with an appointed public office, not with an elected one, and again did not deal with the effect of the existence of a valid

Certificate of Election, as in this case. The third case citied, State v. Riffle, 132 Ohio St. 545, 9 N.E. 2d 497 (1937), a quo warranto action in Ohio, is in apparent conflict with existing Virginia law applicable to this case.

In De Shazo v. Davis, 157 (1932), a Mandamus Case involving the effect of the existence of a Certificate of Election, the Supreme Court of Virginia, citing State v. Oates, 86 Wis. 634, 57 N.W. 296, stated:

"The question first presented is, what effect is to be given to the canvass and certificate of election?* * * The effect which it has plainly must be to determine who is elected to the office. Not necessarily to determine the fact permanently or beyond the possibility revision or reversal, but to determine the fact for the time being, and until a different result be reached in a proper proccceing to contest the title of the certificate holder to the office."

The Supreme Court of Virginia continued to state:

"Plainly, the man with the certificate and canvass in his favor must be admitted to the office, until a competent tribunal reverses the decision of the canvassers. Any other doctrine would be subversive of all law and order."

the Supreme Court of Virginia citing 9 Ruling Case Sections 116 and 144, after asserting that Mandamus must not be assumed to be a substitute for quo warranto or other proceedings wherein the facts on which the claim of title may be termined, stated that this:

"Court will not go behind the certificate, commission, or other declaration of title to the orrice issed or made by the proper authority to inquire into the ultimate right. . ."

In that case the Supreme Court of Virginia held that:

". . .where the relator holds a prima facie and uncontested title to the office . . . a wrint of mandate may be issued to put him in possession of the office . . .* * *

"Nor will the right to the writ be affected by the fact that another claiming a right to the office, or its actual incumbent, may be able to quo warranto sucessfully to contest the relator's prima facie title, either on the ground that another received a greater number of legal voter at the election, or that the relator is ineligible (Emphasis added), or that the eledtion was illegal."

In the mandamus action, the converse was true. Petitioner Golding was the holder of an unchallenged, valid prima

facie Certificate that he was duly elected as City Councilman, which had not been disputed in any proceedings. No action has been made by the Respondents to invalidate this Certificate of the Electoral Board of the City of Richmond, this Board was not a party before the Supreme Court of Virginia in that proceedings, and until an appropriate tribunal reverses this Certificate, the Supreme Court of Virginia should have not have gone behind it This was true regardless of whether or not the Respondents were able to sucessfully contest Petitioner. Respondents did not take the necessary actions under the law to allow them to be granted the relief sought in that case. If the Petitioner had been excluded from performing his duties of office by Respondents, mandamus would lie to readmit him to office as long as he did hold a valid Certificate of Election to that office; and as long as he did hold the required Certificate here, he is entitled to retain this office.

Therefore no vacancy did exist in the Ninth Election District's seat on

City Council, as alleged by the Respondents. In addition, in the arguments in Petitioner's response to the Mandamus Petition, any action taken by Alice Clark Lynch, General Registar of he City of Richmond, in removing the Petitioner name from the voting rolls of the City was or no legal significiance in determining whether or not a vacancy occurred in this office after the Petitioner was sworn in on July 1, 1978.

However, the Supreme Court of Virginia did declare that a vacancy did exist in this office and that teh Petitioner was never elected thereto. It is the position of the Petitioner that section 3.04 of the Charter of the City of Richmond, which the Supreme Court of Virginia pointed Council to, to fill the position that was vacated by their order, was improper if not illegal. First the section required that the Chief Judge of the Circuit Court of Richmond fill this vacancy, although this section is vague it did not require that Council have knowledge of a vacancy before the thirty day period stated therin commences to run. The Supreme Court of Virginia exceeded it's authority in granting an extention beyond 30 days which had expired, if on election

day May 2, 1978 the Petitioner was never elected as the Respondents claimed, 3.04 has never been approved by this court as a method of filling a position on Council in a certain suit entiled: City of Richmond v. United States et al 45 Led 245 (1975), however, section 3.01, 3.02 and 3.03 were approved by this court in the above suit as the only methods of filling a position on the Council of the City of Richmond. Incidentally election at large for Council are illegal in the City of Richmond by this Courts order in the same above suit. Third Section 3.04, which was never changed to incompass, this Courts order, allowed a portion of Council comprised of the other eight districts to force their will on the Ninth Election District. Results of November 22,1978, Supreme Courts order are as follows: On December 18, 1978 there was a black majority of members seated on council, black Councilman Henry W. Richardson nomited a Carolyn C. Wake, with black Mayor Henry L. Marsh III seconding the motion, to the position of councilperson of the predominately white

Ninth Election District. The Black vote was unanimous with the White minority having little choice but to go along for harmoney. This allowed the black majority of council to force their choice of councilperson on the predominately white Ninth Election District. To remove William I. Golding Sr., the choice of a predominately white district and replace him with Carolyn C. Wake, the choice of the black majority of council members circumvents and violates the intent behind the suit entitled: The City of Richmond v. United States et al 44 Led 245(1975) also this violates your Petitioners rights which are protected under Section 5 of the Voting Rights Act of 1965 as amended 42USC, 1973c.

IV THE RELIEF SOUGHT BY THE RESPONDENTS IN THE MANDAMUS ACTION WAS BARRED BY THE DOCTRINE OF LACHES

Respondents' action against Petitioner Golding was barred by Laches. "laches" is such neglect or omission to do what one should do as warrants the presumption that he has abandoned his claim, and

declines to assert his right. There is not absolute rule as to what constitutes laches or staleness of demand, and no one decision constitues a precedent in the strict sense for another; each case is to be determined according to its own particular circumstances. Pittman v Pittman , 208 VA 476, (1968).

In the mandamus action, the records of the Circuit Courts of the City of Richmond showed that the Petititioner was convicted therein 1955 of questionable felonies. The record shows that the Petitioner had been a registered City voter for many years, and had been certified as a candidate by the City of Richmond in the last two councilmatic elections, and has served on City Council since July 1, 1978. All these records are maintained by the City of Richmond and the Respondents knew or should have known, of their existence. The neglect or omission of the City of Richmond and the Respondents to act prior to now against your Petitioner Golding was so inequitable that this action should as a matter of equity have been barred.

V <u>THE RESPONDANTS WERE ESTOPPED IN THE MANDAMUS ACTION FROM DENYING THAT THE PETITIONER WAS A DULY ELECTED AND QUALIFIED MEMBER OF THE CITY COUNCIL</u>.

The City Council of the City of Richmond was Estopped by Record and was precluded to deny the truth of matters setforth in their legislative Records, 31 CJS 292, Estopple Section 4, Swoford Brothers Dry Goods Co., Owen, 133 P. 193, 37 OKL. 616, L.R.A. 1961 C., CJS

Further, parol or extrinsic evidence should have not been admitted to vary or contradict municipal Records, 32A CJS 242, Evidence Section 879, unless somethin appearing in the Record itself gave ground for an attack 32A CJS 242, Evidence Section 879, State v. Alexander, 77 N.W. 841, 107 Iowa 177.

Accordingly, City Council being judge of the election and qualification of its members was estopped from therafter challenging them since as reflected fy the fact that Petitioner Golding was seated on Council on July 1, 1978 at Councils organizational meeting pursuant to Section 4.05 of the Charter of the

City of Richmond which reads in relevant part as follows;

"Council shall be the judge of the election and qualification of its members but the decision of the Council in this matter shall be subject to review by the Hustins Court of the City of Richmond. . .

IV ARTICLE II, SECTION 1 OF THE CONSTITUTION OF VIRGINIA UNCONSTITUTIONAL (DISENFRANCHISEMENT OF FELONS)

"While the right to vote in Federal elections is confirmed by Art. I, Section 2 of the Constitution (United States), the right to vote in State elections is nowhere expressly mentioned." Harper v. Virginia State Board of Elections (1966) 86 Ct. 1079, 1080.

The California Supreme Court said in Otsuka v. Hite, (1974), 51 Cal. Rptr. 284, 414 P2d, 412, that:

"The question of the source of the right to vote in state elections appears still to be open (Harper v. Virginia State Bd. of Elections (1966) supra, 86 S. Ct. 1079, 1080-1081); but it is settled that whatever the source, "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment". . .

"While the right to vote is not among the specifically enumerated rights of the first Amendment, it is nevertheless one which this (U.S. Supreme) Court has been so zealous to protect." (Carrington v. Rash (1965) "supra, 380 U.S. 89,96 85 S. Ct.". . .

"The Supreme Court of the United States) "has stressed on numerous occasions, "(t)he right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions of that right strike at the heart of representative government." Renolds v. Sins 377 U. S. 533,555, 84 S. Ct. 1362, 1378 , 12 LEd. 2d 506. The right is fundamental 'because preservative of all rights.' Yick Wo v Hopkins, 118 U.S. 356, 370, 6S. Ct. 1064, 1071 30 L. Ed. 220." (Harman v. Forssenius (1965) 380 U.S. 89,96,85 S. Ct. 775) and "vital to the maintenance of democratic institutions." (id. at p. 94, 85 S. Ct. at p. 779, quoting from Schnider v. State or New Jersey, 308 U.S. 147, 161, 60S. Ct. 146, 84 LEd. 155). (See also United States v. Mississippi (1965) 380 U.S. 128, 144, 85 S. Ct. 208, 13 L. Ed. 2d 717 ("the right to vote in this country is * * * precious"); Louisiana v. United States (1965) 380 U.w. 145, 153, 85 S. Ct. 817,13 L. Ed. 2d. 709 ("The cherished right of people in a Country like ours to vote"); and, finally, the recent case of Harper v. Virginia State Bd. of Elections (1966) supra, 86 S. Ct. 1079, 1083 ("the right to vote is * * * precious * * * fundamental"_."

Rather than being a creature of the Virginia Constitution, the right of suffrage in this as in every other state of the Union flows from the wellsprings of our national political heritage.

In Richardson V. Ramirez (1974, 94 S. Ct. 2655, the United States Supreme Court stated:

"More impressive than the mere existance of the state constitutional provisions disenfranchising felons at the time of the adoption of the Fourteenth Amendmant is congressional treatment of State thus readmitted. . . a part of the readmission process. . . established conditions on which the former Confederate States would be readmitted to representation in Congress. .

That when the people of any one of said rebel States shall have formed a constitution of government. . . except such as may be disenfranchised for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors. . .

A series of enabling acts in 1868 and 1870 admitted those States to representation in Congress. The Act admitting. . . the first State to be so admitted, attached a condition to its admission. . .

"Wheras the people. . . that the State is entitled and admitted to representation in Congress as one of the States of the Union upon the following fundamental condition: That the constitution. . . shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law. . .

The same "fundamental condition as was imposed by the act. . . with only slight variations in language, imposed. . . that condition. . . by the Acts readmitting Virginia. . . Act of Feb. 1, 1870, c 12, 16 Stat. 63."

In light of the fact that Virginia was readmitted to the Union by "An Act For The More Efficient Government of the Rebel States" pursuant to the condition that the Virginia Constitution shall never be amended or and providing only for the exclusion from the right to vote of citizens convicted of crimes as are felonies at common law. Petitioner contends that it is unconstitutional for the State of Virginia to enlarge the class of persons excluded from the right to vote to include all felons as has been provided in Article II, Section 1 of the Virginia Constitution.

Further, if the Virginia Constitution grants the right to vote to some citizens and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.

As was stated in the disenting opinion in Richardson v. Ramirez (1974) 94 S. Ct. 2655, at 2682, when this test applies:

"The State has the heavy burden of showing, first, that the challenged disenfranchisement is necessary to legimate and substantial state interest; second, that the classification is drawn with precision- that it does not exclude too many people who should not and need not be excluded; and, third, that there are no other reasonable ways to achieve the State's goal with a lesser burden on the constitutionally protected interest. E. g. Dunn v. Blunstein, supra, at 343, 360, 92 S. Ct., at 1003, 1012;

Kramer v. Union Free School District, 395 U.S. 621, 632, 89 S. Ct. 1886, 1892 23L.Ed. 583 (1969); see Rosario v. Rockfeller, 410 U.S. 752, 770, 93 S. Ct. 1245, 1256,36 L. Ed. 2d. 1 (1973) (Powell J., dissenting); cf. Memorial Hospital v. Maicopa, 415 U.S. 250, 94S. Ct. 1076, 39 L. Ed. 2d. 306 (1974); NAACP v. Button, 371 U.S. 415, 438, 83 S. Ct. 328, 340, 9L. Ed. 2d 405 (1963); Shelton v. Tucker, 364 U.S. 479, 488, 81 S. Ct. 247, 252, 5 L. Ed. 2d. 231 (1960)."

It appears that historical constitutional restraints limit the Virginia Constitution to disenfranchisement of voting rights to those persons only convicted of "Common Law Felonies" and it apparently does not include statutory felonies.

We turn then to the scope fo common law felonies as applied to the classification adopted by Article II Section I of the Constitution of Virginia. Appellant contends that "Felony" should not be construed to

mean "any felony" and that when construed the section discriminates because it does not distinguish between felonies malum prohibitum and/or those that are malum in se. The Court must reach and determine the question whether classifications drawn in the Constitution of Virginia are reasonable in light of its purpose. The unreasonableness of classification disfranchising all former felons, regardless of thier crime, if readily demostrable; it raises the spectre of citizens automatically deprived of their right to raise the spectre of citizens automatically deprived of their right to vote upon conviction, for example, of seduction under promise of marriage (Va. Code Section 18. 2-68), cross burning (Va. Code Section 18. 2-423), disinterment of body (Va. Code Section 18. 2-126), second offense involving obsecent publications (Va. Code Section 18. 2-380), injury to property by persons unlawfully assembled (Va. Code Section 18. 2-414), detaining a female to persuate her to marriage (Va. Code Section 18. 2-355), unlawful throwing of missiles at car, train, or vessel (Va. Code Section 18. 2-154). No reasonable re-

lation is apparent between this result and the purpose of protecting the integrity of the elective process.

The constitutional construction of "felony" to include any and all felonies would, as observed above, sweep into its amit milum prohibitum conduct which is but little detrimental to society at large and is totally unrelated to the goal of preservation of the integrity of the elective process.

At common law crime which rendered the person doing them infamous were treason, felony, and crime falsi, the latter embracing not only offenses involving faseehood, but offenses injuriously affecting the administration of justice. What a felony is "at common law" depends to some extent on when the question is asked, for the common law did not remain static in this respect. A typical definition however, would comprise murder, manslaughter, mayhem, rape, arson, robbery, burglary, and larceny.

"The nature of the punishment," in this day of indeterminate sentences and proliferation of technical, malum prohi-

bitum offenses, requires inquiry to focus more precisely on the nature of the crime itself; to determine whether the elements of the crime are common law felonies classified as malum in se and further of a nature such that he who has committed the crime may reasonable be deemed to constitute a threat to the integrity of the elective process.

Upon careful study, by this Court of the questionable felonies committed by your Petitioner in 1955, the Court will discover the conviction records are vague as to the circumstances involved in the offences,in one locality the convictions are labeled statuatory and in the other jurisdictions the conviction records were labeled larceny. The complaints and the grand jury statement no word of "larceny" is mentioned, although your Petitioner was convicted of larceny. The Petitioner could not be convicted for something greater than he was charged with. Your Petitioner was charged withunotherized use of an automobile and breaking and entering, which are statutory offences in the State of Virginia and later labeled

larceny in the conviction records, although evidence was presented to the Supreme Court of Virginia and the court obviously did not make this distinction. Your Petitioner prays that this Court do so and set the convictions aside or declare all the convictions statutory in fact. Your Petitioner is suffering unjustly to day from possible bad proceedures, magustrates, procuting attornies or the hurry of a trial which denied your Petitioner Due Process of law as your Petitioner was denied Attornies advice from the start. This could not happen today because of the protections placed by this Court for the accused.

The Respondent stated in The Virginia Supreme Court that your Petitioner abandoned his right to vote by his concictions of 1955. Your Petitioner must bring to this Courts attention, your Petitioner was 18 years of age in 1955 without the right to vote, as the age to vote was 21 years old and it is the contention of your Petitioner that he was unable to abandon something he had not acquired, therefore this lacked Due Process of Law.

Further, Petitoner believes. . . "that the State has not met its burden of justifying the blanket disenfranchisement of former

felons presented by this case. There is certainly no basis for asserting that ex-felons have any less interest in the democratic process than any other citizen. Like everyone else, their daily lives are deeply affected and changed by the decision of government.

As the Secretary of the State of California observed in his menorandum to the California Court in Otsuka V. Hite (1974), supra.

"It is doubtful. . . Whether the state can demostrate either a compelling or rational policy interest in denying former felons the right to vote. The individuals involved in the present case are persons who have fully paid their debt to society. They are as much affected by the actions of government as any other citizen, and have as much of a right to participate in governmental decision-making. Futhermore, the denial of the right to vote to such persons is a hindrance to the efforts of society to rehabilitate former felons and convert them into law-abiding and productive citizens." (Memorandum of the Secretary of the State of California in Opposition to Certiorari, in Class of County Clerks and Registrars of Voters of California v. Ramirez, No. 73-324.). . .

It is argued that disenfranchisement is necessary to prevent vote frauds. Although

the State has legitimate and, in fact, compelling interest in preventing election fraud, the challenged provision is not sustainable on that ground.

It encompasses all former felons and there has been no showing that ex-felons generally are any more likely to abuse the ballot than the remainder of the population. See Dillenburg v. Kramer, 469, F. 2d. at 1225.

It has also been asserted that former felons should not be allowed to vote because their voting pattern might be subversive of the interest of an orderly society. See Green v. Board of Elections, 380 R. 2d 445, 451 (CA2 1967).

The U.S. Supreme Court stated that to the extent Murphy v. Ramsey, 114 U.S. 15, 5S. Ct. 747, 29 L. Ed. 47 (1885), and Davis v. Beason 133 U.S. 333, 10S. Ct. 299, 33 L. Ed. 637 (1890), approve". . .

the doctrine that citizens can be barred from the ballot box because they would vote to change the existing criminal law, those decisions are surely of minimal continuing precedential value. We have since explicitly held that such "differences of opinion cannot justify for excluding (any) group from. . . 'the franchise,' " Cipriano v. City of Houma, 395 U.S. at 705-706, 89S. Ct. at 1900-1901; see Communist Party of Indiana v. Whitcomb, 414 U.S. 441, 94 S. Ct 656, 38

L. Ed. 2d. 635 (1974); Evans v. Conman, 398 U.S. 419, 423, 90"S. Ct. 1752, 1755, 26 L. Ed. 2d. 370 (1970).

In addition to the above quotation, the dissenting opinion expressed the following in Richardson v. Ramires (1974) 94 S. Ct. 2655.

"(I)f they are..... residents,... they, as all other qualified residents, have a right to an equal opportunity for political representation, ... 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." Carrington v. Rash, 380 U.S., at 94, 85S. Ct. at 779. See Dunn, 405 U. S., at 355, 92 S. Ct. at 1009."

And the dissenting opinion in Richardson v. Ramirez, supra, continued as follows:

"the public purposes asserted to be served by disenfranchisement have been found wanting in many quarters. When this suit was filed 23 states allowed ex-felons full access to the ballot. since that time, four more states have joined their ranks. Shortly after lower federal courts sustained New york's and Florida's disenfranchisement provisions, the legislature repeal those laws. Congress has re cently provided for the restoration of felons' voting righrs at the end of sentence or parole in the District of Columbia, D.C. Code Section 1-1102 (7) (1973) The National Conference on

Uniform State Laws, The American Law Institute, The National Probation and Parole Association, the National Advisory Commission on Criminal Justice Standards and Goals, The President's Commission of Law Enforcement and the Administration of Justice, the California League of Women, the National Democrtic Party, and the Secretary of State of Califoria have all stronhly endorsed full suffrage rights for former felons." Richardson v. Ramirez, (1974) 94 S. Ct. 2655 (dissenting Opinion).

Accordingly, it is the Petitioner's position that Article II, Section I. of the Constitution of Virginia violates the Constitution of the United States Article I, Section 2 and the First and Fourteenth Amendments therto as violating equal protection of the law and due process of law and is in direct contradiction of the enabling acts of 1868 and 1870 titled "An Act to provide for More Efficient Government of the Rebel States".

VII ARE ARTICLE II, SECTION I, OF THE CONSTITUTION OF VIRGINIA AND SECTION 24.1-46 OF THE CODE OF VIRGINIA UNCONSTITUTIONAL (REGISTRATION OF VOTERS)

As an element of qualification to vote or hold public office, a person "shall be

registered to vote....."Constitution of Virginia, Art II, Section I, Section 5, to register an applicant is required to appear in person, complete and sign under oath the application to register stating among other information "whether the applicant has ever been .... convicted of a felony, and if so, under what circumstances the applicants right to vote has been restored." Constitution of Virginia,Art, II,Sec, II.

"In addition to other duties provided by law, it shall be the duty of the general Registerar to:.... (12) strike from the list of voters the names of all persons known to him to be disqualified to vote, as provided in the Constitution, unless such disability has been removed as provided by law.....(Va. Code Section 24.1-46)

"The Fourteenth Amendment to the Constitution of the United States provides:

"Nor shall any state deprive any person of life, liberty or property, without due process of law." "Its persuasive function is to exact from the states observance of basic liberties." 16A CJS, Constitutional Law Section 568.

"The due process guaranties extend to and"binds the state or federal government in every one of its branches, agencies, and political subdivisions, and binds all its creatures." 16A CJS 548, Constitutional Law Section 568.

It necessarily follows that the Due Process of Law protection must extend and bind the General Registerar of Richmond, and it appears that supportive of this position is a case involving the Board of Registerars of Alamaba,In Re Opinion of the Justices, 252 Ala. 351; 40 So. 2d 849. It guarantees a course of legal procedure which has been established in our juris prudence for the protection and enforcement of private rights.....

Due Process of Law has been held to mean the right to be heard, so, its.... indispensable elements,.... or minimal requirements, are notice and opporunity to be heard or to defend. The legislative is without authority to dispense with these requirements of due process; and the due process guaranty of hearing me-

ans a right in persons, not a mere privileges to be extended to them....

The opporunity to be heard has been required to be adequate, fair, and reasonable. The hearing or defense must be before a competent, as well as before a just, equitable and fair, and impartial court or tribunal, and before trail,and judgement or decree.....

There must be an orderly proceeding ....adequate to safeguard the right for which the constitutional protection is invoked....

Due process of law implies the right to contradict by proof every material fact which bears on the question of right involved....

The forgoing protective priniciples are not confined to strictly court proceedings, but extend to every proceeding which may deprive a person of life, liberty, or property whether the process be judical or administrative or excutive in its nature. 16A CJS 571-577, Constitutional Law Section 569 (4)

The Registerar of the City of Richmond has been vested by the legislature with the authority to exercise judicial or quasijudicial discretion indirectly upon the question of whether a person has " qualified" to vote or hold public office. The procedures established by Virginia Code Section 24. 1-46 are without due process of law in that no notice is required or hearing held.

It appears that such action or adjudication may be exercised, even, upon heresay evidence on questions that bear zealous protection.

Your Petitioner was struck as a registered voter upon only hearsay evidence without prior notice or opporunity to be heard.

Your Petitioner was denied the right to vote in the Federal Election of November 6,1978 for the election of the United States senate because of the City Resisterar's action inspite of the fact that your Petitioner had re-registared prior to the election of which he should have never been struck from in the first

place, therefore your Petitioner was denied Due Process of Law and a right guaranteed under the Fourteenth Amendment to the Constitution of the United States.

The Commonwealth of Virginia attempts to shift the burden of proof to the individual but yet at the same time strips him of due process of law.

The fact that your Petitioner was registered to vote and did vote in Chesterfield County, Henrico County and the City of Richmond for approximately eighteen years and declared a candidate by the Board of Elections 1977 and 1978 for City Council is evidence enough of the unenforcability of the requirements and lack of capacity of the Commonwealth to maintain the standard established for qualification.

It is clear that Article II, Section 1 of the Virginia Constitution and dependent constitutional provisions and statues including Virginia Code Section 24. 1-46 lacks due process of law and are unenforcable, vague and uncertain. Accordingly, your Petitioner asserts that they are unconstitutional.

CONSTITUTION OF VIRGINIA

ARTICLE II SECTION 1

Franchise and Officers

Section 1. Qualifications of voters. --

In elections by the peiple, the qualifications of voters shall be as follows: Each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article. No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. As prescribedby law, no person ajudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.

The residence requirement shall be that each voter shall have been a resident ot the Commonwealth for six months and of the precinct where he votes for thirty days. A person who is qualified to vote except for having moved his residence from one precinct to another fewer than thirty days prior to an election may in any such election vote in the precint from which he has moved.

Residence, for all purposes of qualification tc vote, requires both domicile and a place of abode. The General Assembly may provide, in elections for President and Vice-President of the United States, a residence requirement of less than six months and alternatives to registration for new residents of the Commonwealth.

Any person who will be qualified with respect to age to vote at the next general election shall be permitted to register in advance and also to vote in any intervening primary or specual election.

CODE OF VIRGINIA
SECTION 24.1-46

Duties of general registrar - In addition to the other duties provided by law, it shall be the duty of the general registrar to:
(1) Maintain the public office provided by the local governing body and to establish and maintain such additional public offices for the registration of voters as are designed by the electoral board.
(2) Provide the appropriate forms for application to register and to obtain the information necessary to complete the application to the provisions of the Constitution.
(3) Maintain, only in the principal office of the general registrar, separate books containing the names of registered voters in alphabetical order for each election district within his jurisdiction and make them available for all election in such districts.
(4) Maintain in his office suitable books containing lists in alphabetical order of persons registered and carry out such other duties as prescribed by the electoral board.
(5) Certify the list of election districts, the number of voters and information as required by the State Board of Elections.

(6) Preserve as part of the official records the written applications of all persons who are registered and preserve for a period of two years the written applications of all persons who are denied registration.
(7) If a person is refused registration, notify such person in writing of such refusal and the reason forthwith.
(8) Upon being informed and determining that a voter is registered in a precinct, election district, county or city, in which he no longer resides, if such voter be within the same jurisdiction, transfer such voter and notify him by mail of such change. If such voter be without the jurisdiction, the general registrar shall notify such voter of the voter's duty to transfer to the election district of his residence, and if such voter fail to comply with the law, remove such voter's name by purge as provided by Section 24.1-24.
(9) In the event that election districts are rearranged or a new district created, cause the names of those registered voters residing in the rearranged or new districts to be placed on the books and lists for the proper election district and notify such voter by mail of the changes.

(10) In the event through annexation, merger or similar means an area in which registered voters reside becomes a part of another election district, county or city, furnish to the appropriate general registar lists of registered voters so affected. Such registered voters shall be placed on the registration books of the new election dictrict, county of city, so notified by mail, or stricken from the registration books of the general registrat so transferring them.

(11) In the event of registration of a qualified voter, who was previously registered in another place, notify the appropriate authority of the last place of previous registration of such new registration. Such notice shall be upon a form prescribed or approved by the State Board of Elections.

(12) Strike from the list of voters the names of all persons known to him to be disqualified to vote, as provided in the Constitution, unless such disability has been removed as provided by law. The various records concerning such name shall be retained for a period of two years.

(13) Purge the registration books pursuant to Section 24.1-59 through Section 24.1-62

and maintain accurate books of registered voters. A voter's name may be removed from the registration records Pursuant to Section 24.1-60 at any time during the year at which the registrar discover that such person is no longer entitled to be registered in such district, except within sixty days of the general election in November or within thirty days of any other election in such district.

(14) Whenever the registration books in any election district are so mutilated, blotted, defaced, or otherwise in such condition as to render it difficult, troublesome or unsafe to use them longer, the electoral board shall then order, or may at any time order, that the books shall be copied, cause fair copies to be made of the old registration books, and they shall take the place of the old books. The general registrar shall preserve the old books.

(15) Upon request of the local governing body, to inform in writing those local govermental agencies or departments duly designated the names and addresses of all new registered voters, all those removed from the registration lists and all those changes of address occurring within the period requested.

Section 301. ELECTION OF COUNCILMEN
On the first Tuesday in May, nineteen hundred seventy-eight and on the first Tuesday in May in every second year thereafter there shall be held a general city election at which shall be elected by the qualified voters of the city one member of council from each of the nine elections districts in the city, the voters residing in each such district to elect one member for said district for terms of two years from the first day of July following their election.

Section 3.02. NOMINATION OF CANDIDATES FOR COUNCIL.
No primary election shall be held for the nomination of candidates for the office councilman, and candidates shall be nominated only by petition. There shall be printed on the ballots used in the election of councilmen in each election district the names of all candidates who have been nominated for

election in such district by petition and the filing of a notice of candidacy as provided herein and no others. The requirements for nomination shall be:

(a) Any qualified voter of the city may be nominated for election as councilman for the district in which he resides by filing no later than the fixed time for the closing of polls on the first Tuesday in March, with the clerk of the Circuit Court of the City of Richmond, Division I, a petition signed by not less than one hundred twenty-five qualified voters of the district in which such candidate resides and for which he seeks election, each signature to which has been witnessed by a person whose affidavit to that effect is attached thereto, together with a notice of candidacy required by the general laws of the Commonwealth relating to elections.
(b) The petition shall state the name and street address of the residence of the person whose name is presented thereby as a candidate, and the persons signing the same.

Section 3.03 CONDUCT OF GENERAL MUNICIPAL ELECTION.
The ballots used in each district in the election of councilmen shall be without any distinuishing mark or symbol. Each qualified voter shall be entitled to cast one vote for one person to serve as councilman for the district in which such voter resides and no more. In counting the vote any ballot found to have been voted for more than one person shall be void. The candidate reciving the highest number of votes cast in such election in each district shall be declared elected. The general laws of the Commonwealth relating to the conduct of the elections,so far as pertinent, shall apply to the conduct of the general municipal election.

Section 3.04. VACANIES IN OFFOCE OF COUNCILMAN.
Vacancies in the office of councilman from whatever cause arising , shall be filled for the unexpired portion of the term by majority vote of the remaining members of the council or, if the coun-

cil shall fail to fill a vacancy in its membership within the thirty days of the occurence of the vacancy, by appointment by the chief judge of the City of Richmond. (Acts 1975, ch. 112. & 1.)

I, William I. Golding Sr. hereby certify that the information presented in this Petition for a Writ of Certorari is true and accurate to the best of my knowledge. This Petition for a Writ of Certorari has been prepared according to rule 23 of the Rules of The Supreme Court of the United States.

William I. Golding Sr.

STATE OF VIRGINIA
CITY OF RICHMOND:

I, the undersigned, notary public do certify that the above person appeared before me this 14th day of February 1979, acknowledge that the abbove is true and correct to the best of his knowledge and belief.

My commission expires March 12, 1982.

Bessie Jordan Lynch
Notary Public